

### **REMARKS**

In conjunction with a Request for Continued Examination (RCE) being submitted herewith, the Applicant respectfully submits the above amendments and the following remarks and requests further examination of this application.

Claims 32, 34-36 and 44 were rejected as unpatentable over U.S. Patent No. 3,788,327 to Donowitz ("Donowitz"), U.S. Patent No. 5,433,701 to Rubinstein ("Rubinstein") and U.S. Patent No. 5,053,040 to Goldsmith ("Goldsmith"). Claims 37-43 and 45 were rejected as unpatentable over Donowitz, Rubinstein, Goldsmith and U.S. Patent No. 5,000,731 to Wong ("Wong").

The Applicant has amended claims 32, 34 and 39 to recite that the flange "comprises at least one passageway extending in a direction from the axial outlet at the outlet end of the tube toward the outer periphery of the flange to facilitate flow of aqueous humor in a direction transverse to the flange from the axial outlet at the outlet end of the tube toward the outer periphery of the flange." The Applicant has also amended claims 32, 34 and 39 to recite the step of "allowing aqueous humor to flow through the tube passage from the inlet end to the outlet end of the tube and from the axial outlet at the outlet end of the tube through said at least one passageway in a direction transverse to the flange toward the outer periphery of the flange."

Support for these amendments can be found in the specification and drawings, for example in paragraph 0039 of the specification as published (US Patent Application 2004/0088048), and in Figure 4, which are reproduced below:

[0039] The disk 34, shown enlarged in FIG. 4, comprises a base 44, an outer rim 46, and a plurality of inner uprights 48. The areas between the uprights 48 constitute passageways 56 for the transverse flow of aqueous humor. The base 44 and outer rim 46 define a reservoir 54 such that, in operation, the aqueous humor flows out of the axial outlet 51 of the tube passage 38, between the uprights 48, and into the reservoir 54.

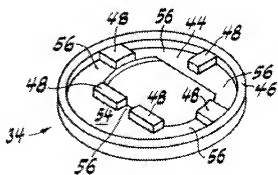


FIG. 4

The Applicant respectfully submits that the references of record do not disclose or render obvious the invention as claim by the Applicant. In particular, the flange portion 34 of Donowitz does not comprise Applicant's claimed "passageway extending in a direction from the axial outlet at the outlet end of the tube toward the outer periphery of the flange to facilitate flow of aqueous humor in a direction transverse to the flange from the axial outlet at the outlet end of the tube toward the outer periphery of the flange." Similarly, Donowitz does not disclose or suggest the step of "allowing aqueous humor to flow ... from the axial outlet at the outlet end of the tube through said at least one passageway in a direction transverse to the flange toward the outer periphery of the flange." In Figure 4 of Donowitz, the flange portion 34 of Donowitz has no passageway between the tube outlet and the outer periphery of the flange portion 34. Similarly, in Figure 6 of Donowitz, the flange portion 34 is provided with an upstanding ridge member 64 which completely encircles the tube outlet and thus in fact obstructs flow from the tube outlet toward the outer periphery of the flange portion 34. Thus, Donowitz not only does not disclose or suggest Applicant's claimed invention, transverse passageway, and flow direction, Donowitz actually teaches away from Applicant's claimed invention.

The other references of record do not cure the deficiencies of Donowitz. The Rubinstein, Goldsmith and Wong references were relied upon for features unrelated to the flange and, in any event, do not in any way suggest modifying Donowitz to provide Applicant's claimed invention, transverse passageway, and flow direction.

In response to the rejection based on obviousness-type double patenting, the Applicant respectfully submits the enclosed terminal disclaimer directed to U.S. Patent No. 5,702,414. The filing of this terminal disclaimer to obviate the rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991); MPEP § 804.02.

For the foregoing reasons, the Applicant respectfully submits that the claims are patentable over the prior art of record, and the Applicant respectfully requests allowance of all claims. The amendments submitted herein are without prejudice to Applicant's right to continue to pursue claims of the scope presented prior to this amendment in one or more continuation applicants. Moreover, the above amendments are submitted to advance prosecution and in no way constitute an admission that the claims of the scope presented prior to this amendment are not patentable over the prior art. To the contrary, the Applicant maintains that the claims of the scope presented prior to this amendment are patentable over the references, at least for the reasons of record. Nevertheless, the above amendments are being submitted to advance prosecution and to obtain prompt allowance of the claims.

Thus, for the foregoing reasons, the Applicant respectfully requests reconsideration of the rejections of the pending claims. Should any questions arise concerning this application, the Examiner is invited to contact the undersigned at (202) 220-4200. The Commissioner is

authorized to charge any necessary fees or credit any overpayments under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

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